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DWEN EDWARD CURRY

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **WESTERN DIVISION**

11 UNITED STATES OF AMERICA,
12
13 Plaintiff,
14 v.
15 DWEN EDWARD CURRY,
16 Defendant.

Case No. CR 15-00666-JFW

**DWEN CURRY'S POSITION
REGARDING FACTORS
RELEVANT TO SENTENCING**

17 Defendant Dwen Edward Curry, by and through her counsel of record, Deputy
18 Federal Public Defender Gabriel L. Pardo, hereby submits her position regarding
19 factors relevant to sentencing.
20

21 Respectfully submitted,

22 HILARY POTASHNER
23 Federal Public Defender

24 DATED: November 2, 2016

By: */s/ Gabriel L. Pardo*

25 GABRIEL L. PARDO
26 Deputy Federal Public Defender
27 Attorneys for Dwen Edward Curry
28

I. DWEN CURRY'S SENTENCING POSITION

Dwen Curry is before the Court for sentencing following her¹ admission to allegations 2, 3, and 4 of the Violation Petition filed on March 8, 2016.² Ms. Curry agrees that the highest violation grade is B and that, per her Presentence Report, her criminal history category at the time of the underlying conviction was V. Thus, Ms. Curry's revocation guidelines range (per Chapter 7 of the United States Sentencing Guidelines) is 18-24 months. For the reasons explained herein, Ms. Curry respectfully requests that the Court sentence her to one year and one day of incarceration.

As the Court knows, its duty at sentencing is to decide what term meets the directive of parsimony and thus comports with the charge to impose a sentence sufficient, but not greater than necessary, to accomplish the sentencing goals advanced in Section 3553(a).¹ See 18 U.S.C. § 3553(a); *Kimbrough v. United States*, 128 S. Ct. 558, 575 (2007); *United States v. Carty*, 520 F.3d 987, 991 (9th Cir. 2008) (en banc); *Rita v. United States*, 127 S. Ct. 2456, 2465 (2007). Consideration of the advisory Guidelines range is subordinate to the mandate that the punishment be a particularized sentence minimally sufficient to accomplish the statutory purposes of sentencing. See *Carty*, 520 F.3d at 995. A non-guidelines sentence meets the goals of 18 U.S.C. § 3553(a) provided it is in accord with the directive of parsimony. *Kimbrough*, 128 S.Ct. at 575.

As a threshold matter, Ms. Curry notes that all of her criminal history points (10) arise from a series of convictions based on arrests between April and August 2006. See PSR ¶¶ 40-43. During this period of time, Ms. Curry was struggling with an addiction

¹ Dwen Curry prefers to be identified as female.

² Allegations 1 and 5 of the Petition were dismissed.

1 to prescription drugs.³ It should also be noted that two of Ms. Curry's prior three-point
 2 convictions (totaling six criminal history points) were sentenced on the same day to run
 3 concurrent. *See* PSR ¶¶ 42, 43. Because the PSR indicates that these convictions were
 4 based on conduct separated by an intervening arrest, the Guidelines instruct that each
 5 should receive criminal history points. *See* U.S.S.G. § 4A1.2(a)(2).

6 Ms. Curry respectfully submits that the above facts—the short period of time in
 7 which she amassed 10 criminal history points, the drug addiction fueling her conduct,
 8 and the fact that two of her three-point convictions were sentenced concurrently on the
 9 same day—support an argument that her criminal history score over-represents the
 10 seriousness of her criminal history.⁴ Had Ms. Curry's point total been one lower (9),
 11 her criminal history category would have instead been IV and her Guidelines range at
 12 this revocation proceeding would be 12-18 months imprisonment.

13 The Guidelines instruct that, for supervised release revocation proceedings,
 14 “[t]he criminal history category to be used in determining the applicable range of
 15 imprisonment . . . is the category determined at the time the defendant originally was
 16 sentenced to the term of supervision.” U.S.S.G. § 7B1.4, Application Note 1. Because
 17 it appears the criminal history category determined at the time of Ms. Curry's original
 18 sentencing was V, considerations regarding whether Ms. Curry's criminal history
 19 category over-represents the seriousness of her past conduct should be assessed by this
 20 Court in connection with application of the principle of parsimony and analysis of the
 21

22 ³ The PSR also describes two incidents during this time period where
 23 prescription drugs were found on Ms. Curry. *See* PSR ¶¶

24 ⁴ Pursuant to U.S.S.G. § 4A1.3(b), a downward departure in criminal history
 25 category may be warranted “[i]f reliable information indicates that the defendant's
 26 criminal history category substantially over-represents the seriousness of the
 27 defendant's criminal history or the likelihood that the defendant will commit other
 28 crimes.”

1 Section 3553(a) factors. Ms. Curry respectfully submits that these considerations
2 weigh in support of the requested sentence of one year and one day.⁵

3 Ms. Curry also respectfully submits that her background, history, and
4 characteristics weigh in favor of the requested sentence. Attached to this sentencing
5 position are letters to the Court from Ms. Curry, her mother, and three other friends,
6 supporters, and employers. These letters provide insight into Ms. Curry and her past.

7 Ms. Curry has struggled for many years with issues related to her identity. Ms.
8 Curry considers herself androgynous, which she describes as: “a person whos percieved
9 to be stuck between two worlds. looks like a girl but really is a boy and thats something
10 ive struggled with the majority of my life.” *See* Ex. A. Ms. Curry takes hormone
11 medication and seeks out relationships with men. Growing up in the Midwest, Ms.
12 Curry was subjected to harassment and bullying because of her identity. These issues
13 initially led her to seek solace in drugs, including crack cocaine. *See* PSR ¶¶ 65-66.

14 Ms. Curry was able to overcome her addiction to crack cocaine. She began a
15 productive career as a wardrobe stylist. But another addiction eventually took hold.
16 Ms. Curry sought solace in material goods, in an effort to fill a void that existed since
17 childhood. As Ms. Curry explains:

18 “ive allowed material things to define who i am in the past and ive
19 held a superficial image up by pretending that i am happy, truth of the
20 matter is im not. its a shame ive allowed others to dictate who i am, i
21 realize that the same way that i beat the desease of addiction is the

22
23 ⁵ Ms. Curry acknowledges that her criminal history category would increase
24 today based on her conviction in Los Angeles Superior Court case number LA082761.
25 However, because this conviction is the basis for the revocation proceeding, it is
26 appropriately accounted for through the Grade B violation range. *Cf.* U.S.S.G. § 7B1.4,
27 Application Note 2 (“[A]n upward departure may be warranted when a defendant,
28 subsequent to the federal sentence resulting in supervision, has been sentenced for an
offense *that is not the basis of the violation proceeding.*”) (emphasis added).

1 same way that i can beat this mental illness that i have going on
2 because my behavior is atrocious.”

3 *See* Ex. A.

4 Ms. Curry’s struggles with her identity were compounded by her discovery,
5 upon entering into the custody of the Federal Bureau of Prisons, that she has AIDS.
6 *See* PSR ¶ 61. While she received medical treatment during her time in BOP custody,
7 Ms. Curry did not learn how to live with her condition on the outside. She struggled to
8 accept her condition and her own mortality, and retreated inward. It took her a
9 significant amount of time to admit to her mother—the person she is closest too—that
10 she has AIDS. Fortunately, her mother is now aware of her condition and is willing to
11 do whatever she can to support Ms. Curry. *See* Exhibit B.

12 It is in this context that the instant violations occurred. Ms. Curry understands
13 and acknowledges that her violation conduct reflects a serious breach of the Court’s
14 trust. During her time in state custody, she began working to understand the personal
15 factors that have led her to this behavior. She participated in Moral Reconciliation
16 Therapy, which helped her to better understand her behavior and take steps to correct
17 it. She also participated in other self-help coursework. She wishes to continue
18 treatment should a new term of supervised release be imposed.

19 Upon release from custody Ms. Curry will be embraced by her friends and
20 family. *See* Exhibits B-E. She will also have opportunities for employment, including
21 through her close friend and producer Dion Fearon. *See* Exhibit D. Ms. Fearon, who
22 has written to the Court and who defense counsel also spoke with, has both immediate
23 employment opportunities for Ms. Curry and longer-term opportunities, including an
24 opportunity for Ms. Curry to be a cast member on a reality television show. *Id.*

25 Finally, it should be noted that Ms. Curry spent approximately eight months in
26 state custody for the convictions underlying this revocation proceeding. Although the
27 Guidelines instruct that in these situations any time imposed for supervised release
28 violations should run consecutive, the time Ms. Curry has already served can and

1 should be considered by the Court, along with the other factors discussed above, in its
2 application of the principle of parsimony and analysis of the Section 3553(a) factors.

3 **II. CONCLUSION**

4 For the foregoing reasons and such other reasons as may be discussed at the
5 sentencing hearing, Ms. Curry respectfully requests that the Court sentence her to one
6 year and one day in custody.

7 Respectfully submitted,

8 HILARY POTASHNER
9 Federal Public Defender

10 DATED: November 2, 2016

By: */s/ Gabriel L. Pardo*

11 GABRIEL L. PARDO
12 Deputy Federal Public Defender
13 Attorneys for Dwen Edward Curry
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